



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FWP/172346

PRELIMINARY RECITALS

Pursuant to a petition filed February 29, 2016, under Wis. Admin. Code § HA 3.03(4), to review a decision by the Dunn County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on June 8, 2016, at Menomonie, Wisconsin. The petitioner previously had a hearing in this matter on March 23, 2016, and the Division of Hearings and Appeals dismissed that appeal on April 16, 2016. The petitioner requested a rehearing because of alleged errors in the decision. The Division of Hearings and Appeals granted that request on May 11, 2016.

The issue for determination is whether the county agency correctly ended the petitioner's FoodShare benefits because she failed to comply with the program's work requirements.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

■

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]

Dunn County Department of Human Services
808 Main Street
PO Box 470
Menomonie, WI 54751

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Dunn County.

2. The Great River Consortium notified the petitioner on February 17, 2016, that her FoodShare benefits would end on March 1, 2016, because “[y]ou have used 3 months of time-limited benefits without meeting a work requirement during those 3 months.”
3. The Northern Consortium referred the petitioner to the FoodShare Employment and Training program on December 18, 2015.
4. The petitioner was fired from [REDACTED]. She applied for unemployment benefits on November 20, 2015. Those benefits were denied on January 26, 2016.
5. The petitioner complied with the unemployment program’s work-search requirements while her claim was pending.

DISCUSSION

Federal FoodShare law directs states to require recipients to work or participate in a Food Stamp Employment and Training Program (FSET) or a similar program. 7 CFR 273.7(a)(i). Wisconsin obtained a waiver, which had made the FoodShare program’s work requirements voluntary since 2008. In 2014, the state again began making the work requirements mandatory. Wis. Stat. §49.79(10). Able-bodied adults under 50 years old cannot receive FoodShare for more than three full months in any 36-month period unless they comply with the program’s work requirements. 7 CFR § 273.24(b); Wis. Stat. § 49.79(1)(am) and (10)(a)2. To comply with these requirements, a person must work or participate in an authorized program at least 20 hours per week. 7 CFR § 273.24(a)(1).

A person receiving unemployment compensation is not considered an able-bodied adult. In addition, a “person who has applied for, but is not yet receiving, unemployment compensation is also exempt if that person is complying with work requirements that are part of the Federal-State unemployment compensation application process.” Wis. Stat. § 49.79(1)(am)6, referring to 7 CFR § 273.24(c)(5), which refers to 7 CFR § 273.7(b)(1)(v). If the recipient’s claim that she is exempt because she is complying with the unemployment program’s requirements is questionable, “the State agency is responsible for verifying the exemption with the appropriate office of the State employment services agency.” 7 CFR § 273.7(b)(1)(v).

The county agency ended the petitioner’s FoodShare benefits because she had received those benefits for at least 90 days after she was fired from [REDACTED]. She applied for unemployment compensation, but her application was denied on January 26, 2016, and a subsequent appeal upheld that denial. She contends that the time she was waiting for that decision should not count toward the 90 days because she complied with the program’s work-search requirements. An earlier FoodShare decision in this matter incorrectly placed the burden on her to prove her compliance and dismissed her appeal. But as 7 CFR § 273.7(b)(1)(v) states, it is up to the FoodShare agency to prove that she did not comply. The decision granting this rehearing informed the agency of this burden and indicated that the agency would have to gather evidence proving that the petitioner did not comply with these requirements. At the hearing, the worker conceded that the agency had no such evidence. Furthermore, the petitioner testified that she complied with this requirement. Based upon the evidence before me, I will find that the petitioner has not used up her time-limited FoodShare benefits and order the agency to reinstate her into the program retroactive to the date it ended her benefits because of an FSET sanction.

I note to the petitioner that her exemption from the FSET program’s work requirements is only for the period ending with the denial of her unemployment claim.

CONCLUSIONS OF LAW

The county agency incorrectly ended the petitioner's FoodShare benefits as a result of an FSET violation because she was exempt from the program's work or job-training requirements when she was meeting the job-search requirement of the unemployment program.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it reinstate the petitioner into the FoodShare program retroactive to the date it ended those benefits because she allegedly failed to comply with the program's work requirements. Nothing in this decision prevents the agency from taking future action against the petitioner if she fails to comply with FoodShare program's work requirements for more than three full months in any 36-month period.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 10th day of June, 2016

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 10, 2016.

Dunn County Department of Human Services
Division of Health Care Access and Accountability